

WHAT ARE SWORN TRANSLATORS PUNISHED FOR? 10 YEARS OF OPERATION OF THE COMMISSION FOR PROFESSIONAL ACCOUNTABILITY OF SWORN TRANSLATORS AT THE MINISTER OF JUSTICE

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Abstract: The aim of the paper is to present the operation of the Commission for Professional Accountability of Sworn Translators at the Minister of Justice looking back on its almost ten-year history. In the theoretical part, we will discuss the legal framework within which it operates, the procedure it follows and the types of penalties it may impose. In the practical part, we will carry out a quantitative and qualitative analysis of the cases which have been heard so far at hearings conducted before the Commission. The analysis will allow us to distinguish different types of infringements committed by sworn translators. We will focus our attention on translation errors, especially those which had or might have had adverse legal consequences.

Key words: disciplinary commission, ethics, professional accountability, sworn translator.

ZA CO KARANI SĄ TŁUMACZE PRZYSIĘGLI? 10 LAT DZIAŁALNOŚCI KOMISJI ODPOWIEDZIALNOŚCI ZAWODOWEJ TŁUMACZY PRZYSIĘGLYCH PRZY MINISTRZE SPRAWIEDLIWOŚCI

Abstrakt: Celem artykułu jest przedstawienie działalności Komisji Odpowiedzialności Zawodowej Tłumaczy Przysięgłych w Ministerstwie Sprawiedliwości z perspektywy jej blisko dziesięcioletnich doświadczeń. W części teoretycznej omówimy ramy prawne, procedurę postępowania oraz rodzaje wydawanych przez KOZ kar. W części praktycznej przeprowadzimy analizę ilościową i jakościową przypadków, które były dotychczas rozpoznawane na rozprawach prowadzonych przed komisją. Analiza ta pozwoli na wyodrębnienie różnych typów błędów popełnianych przez tłumaczy przysięgłych. W centrum zainteresowania znajdą się błędy

merytoryczne tłumaczy przysięgłych, zwłaszcza te, które wywarły lub mogły wywołać negatywne skutki prawne.

Słowa kluczowe: komisja dyscyplinarna, etyka, odpowiedzialność zawodowa, tłumacz przysięgły

Status and tasks of the Commission for Professional Accountability of Sworn Translators

The Commission for Professional Accountability of Sworn Translators at the Minister of Justice was set up under the Act on the Profession of Sworn Translator of 25 November 2004 (Dz.U. [Journal of Laws], 27 December 2004). Its role is to take decisions as to the professional accountability of sworn translators who do not perform their tasks and/or duties under article 21(1) of the above Act (hereinafter referred to as the APST or the Act) or who perform those tasks and/or duties improperly or in an unreliable manner.

Article 21(1) of the APST¹ obliges sworn translators to:

- (i) perform the tasks with which they are entrusted with particular diligence and impartiality, in compliance with the rules arising from the provisions of law,
- (ii) keep confidential the facts and circumstances which have become known to them in connection with their translation services,
- (iii) improve their professional qualifications,
- (iv) translate in proceedings conducted under a legislative act at the request of a court, public prosecutor, the police or public administration bodies unless they have especially important objections,
- (v) keep a sworn translator's register to record their translation services,
- (vi) on all certified translations and certified copies of letters in a foreign language, write down the number under which the document has been recorded in the sworn translator's register,
- (vii) state on all translations and copies of letters in a foreign language whether they have been made on the basis of an original, translation or copy and whether the translation or copy has been certified and, if so, by whom.

As Dostatni remarks (2005, 110):

the sworn translator is held professionally accountable only for the actions listed in article 21(1) of the Act. It contains an exhaustive list of prohibited actions, which additionally, in accordance with the rules relating to duties and accountability, should be construed narrowly and cannot be extended by analogy to include other actions.

However, the adjudication practice of the Commission for Professional Accountability is different since – as we will discuss later – sworn translators are also punished for non-compliance with requirements not explicitly listed in article 21(1). This is because the sworn translator's duty under article 21(1) to comply in their work with the rules arising from legal regulations allows the Commission to include as part of

¹ As at 31 December 2014.

professional accountability all duties imposed on sworn translators by law – for instance, the duty to report changes of particulars relating to a sworn translator and entered in the register of sworn translators within 30 days from the change.

If a sworn translator infringes a requirement or requirements imposed on them, this may result in the imposition of one of the following penalties: an admonition, a reprimand, a suspension of the right to practice the profession of sworn translator for a period from three months to one year or deprivation of the right to practice the profession of sworn translator with the possibility of returning to the profession only after passing the qualification examination, which can be taken not earlier than two years from the deprivation. The penalty imposed is recorded in the register of sworn translators, kept by the Minister of Justice. In the case of deprivation of the right to practice the profession, the Minister of Justice strikes off the translator from this register. Depending on the type of penalty, it is expunged after two or three years from the date when it became legally binding. Sworn translators are held professionally accountable basically for three years from the date of performing the prohibited actions.

The Commission for Professional Accountability of Sworn Translators is set up by order of the Minister of Justice. It is made up of nine members, out of whom four are appointed by the Minister of Justice, four by translators' associations and one by the Minister of Labour. Such composition of the Commission, which brings together lawyers and translators, "is a guarantee," as Kubacki puts it (2012, 299),

that cases are heard and decisions made by a very competent body because it incorporates legal and linguistic experts. Both legal and linguistic knowledge is necessary to decide whether a translation has been made with due diligence and whether its quality meets the requirements laid down for certified translations.

Professional accountability proceedings are initiated and conducted by the Commission for Professional Accountability at the request of the Minister of Justice or a provincial governor. Moreover, clients who commissioned a translation service can ask them to file an application to the Commission to initiate such proceedings. The person to whom the proceedings relate takes part in them. This person's unjustified failure to appear does not stop the proceedings. She or he may appoint a sworn translator or lawyer to defend her or him.

Apart from imposing a penalty, the Commission for Professional Accountability may also acquit a sworn translator or discontinue the proceedings against her or him. The Commission's decisions take the form of resolutions adopted by an absolute majority of votes in the presence of at least half of its members. According to Cieślík, Laska and Rojewski (2010, 75), the Commission should have been given the possibility to find a translator guilty and resign from imposing a penalty. *There are situations*, state the authors mentioned above,

when such a decision would fulfil the task of individual prevention because the sheer necessity of appearing before the Commission for Professional Accountability is for some people a humbling enough experience and the degree of their guilt as well as the harmful effect of what they did are insignificant.

Both a sworn translator and the Minister of Justice or a provincial governor have the right to appeal against the decision of the Commission to a court of appeal with territorial jurisdiction over the sworn translator's place of residence. The Minister of Justice may appeal against a decision to discontinue the proceedings even if she or he did not file an application to initiate them. A legally valid decision closing judicial proceedings cannot be appealed against.

Statistical data

The chairperson of the Commission for Professional Accountability is obliged by the provisions of the Regulation on the Commission for Professional Accountability of 24 January 2005 to submit a report on its operation to the Minister of Justice every year. By courtesy of the chairperson of the Commission, those reports have been publicly available since 2009 in *Biuletyn TEPIŚ [TEPIŚ Bulletin]* (cf. Zieliński, 2010–2014), published by Polskie Towarzystwo Tłumaczy Przysięgłych i Specjalistycznych TEPIŚ [*The Polish Society of Sworn and Specialized Translators TEPIŚ*], and on the website of Stowarzyszenie Tłumaczy Polskich [*The Association of Polish Translators and Interpreters*] (cf. Zieliński, 2015). They contain statistical data relating to the number of applications received and examined by the Commission in a given reporting year, the type of charges made in those applications, the number and type of penalties imposed by the Commission and the number of appeals against the Commission's resolutions lodged by the accused to the competent court of appeal. Moreover, the reports comprise sociological statistical data, such as the languages represented by the accused sworn translators and their sex. As the reports have been publicly available since 2009, the statistical data for the years 2005–2008 have been taken from the book by Artur D. Kubacki, a member of the Commission for Professional Accountability, published in 2012.

An analysis of all the sources listed above allows us to build a statistical picture of the Commission's operation in the period from 1 October 2005 to 31 December 2014. The Commission for Professional Accountability received in total 412 applications, including 293 from the Minister of Justice and 119 from provincial governors. The Commission imposed 307 penalties and acquitted 63 people of the charges made against them. An admonition (151 people) and a reprimand (124 people) were the most common penalties. More severe penalties were imposed sporadically: 29 people were punished by a suspension of the right to practice the profession for various periods (12 people for three months, three people for six months, 11 people for one year, one person for four months, one person for seven months and one person for eight months) and three people by deprivation of the right to practice the profession of sworn translator. Furthermore, the Commission discontinued 16 proceedings due to various reasons: the prohibited act had been committed before the coming into force of the APST, the matter had already been adjudicated upon (*res iudicata*),

the act had not been included in the statutory list of prohibited acts, the statute of limitations applied to the act, the sworn translator had died, she or he had already been struck off from the register of sworn translators or the application had been filed to the Commission by mistake. The Commission also had to suspend some proceedings because the accused had been arrested (one person), it had been unable to establish where the sworn translator lived and thus it was impossible to serve on her or him a summons for the hearing (ten people) or she or he had gone abroad (seven people). In total, 12 appeals were lodged against the Commission's decisions to courts of appeal with territorial jurisdiction over the sworn translator's place of residence. The courts of appeal – in most cases – commuted the penalties imposed by the Commission, acquitted the translator or discontinued the proceedings. Only in 3 cases were the penalties imposed by the Commission (in 2009 and 2010) upheld. The appeals lodged to courts of appeal in 2014 are pending.

The reports submitted by the chairperson of the Commission for the years from 2009 to 2014 also offer a sociological insight as to who the accused sworn translators are. Because of the feminization of this profession, women (207) are more frequently the accused than men (82). As for the languages represented by the sworn translators charged, they are usually popular languages. The dominant ones are as follows: German (90 translators), English (58 translators), French (51 translators), Russian (38 translators) and Italian (30 translators). Amongst the rarer languages, the leading ones are: Dutch (ten translators), Greek (seven translators), Swedish (eight translators) and Norwegian (six translators). In six cases, the accused were sworn translators of two or more languages. The statistical data might be sometimes surprising. For instance, disciplinary proceedings were instituted against seven sworn translators of Greek out of ten such translators in Poland.

The statistics also show the type of charges made in applications submitted to the Commission by the Minister of Justice or provincial governors. The most common ones are: infringement of article 14(1) of the APST, i.e. failure to perform the tasks with which sworn translators are entrusted with particular diligence and impartiality, in compliance with the rules resulting from the provisions of law (223 cases), and infringement of article 17 of the APST, i.e. recording translation services in the sworn translator's register contrary to the APST provisions (58 cases). The remaining charges include:

- (i) infringement of article 15 of the APST, i.e. refusal to translate in proceedings conducted under a legislative act at the request of a court, public prosecutor, the police or public administration bodies – 21 cases,
- (ii) infringement of article 18 of the APST, i.e. using a round seal non-compliant with the APST provisions, failure to write down the number on certified translations and certified copies of letters in a foreign language under which the document has been recorded in the sworn translator's register and/or using an inappropriate certification formula – 16 cases,
- (iii) infringement of article 20 of the APST, i.e. a sworn translator's failure to appear before a provincial governor, who supervises sworn translators' services – 14 cases,

- (iv) infringement of article 16(2) of the APST, i.e. failure to charge the remuneration rates specified by the Minister of Justice for the sworn translator's services provided at the request of a court, public prosecutor, the police or public administration bodies – ten cases,
- (v) infringement of article 8(2) of the APST, i.e. failure to report changes of particulars relating to a sworn translator and entered in the register of sworn translators within 30 days from the change – four cases,
- (vi) infringement of article 19 of the APST, i.e. failure by a sworn translator to submit her or his specimen signature and specimen seal impression to the Minister of Justice, the Minister of Foreign Affairs and the provincial governor competent with respect to the sworn translator's place of residence – two cases,
- (vii) infringement of article 14(2) of the APST, i.e. failure by a sworn translator to keep confidential the facts and circumstances which have become known to her or him in connection with her or his translation services – one case.

Types of infringements of the APST

While discussing in detail the professional accountability of sworn translators in his book *Certified Translation*, Kubacki (2012, 309–312) divided the infringements of statutory provisions into **formal infringements**, **criminal infringements** and **factual infringements**, the last ones being infringements of the duty to perform the tasks with which sworn translators are entrusted with particular diligence and impartiality. The above statistical data show that the list of formal infringements presented in his book has not changed much. Only two cases have been added to it by now, namely a sworn translator's failure to appear before a provincial governor in order to allow the governor to inspect the sworn translator's services and failure to charge the fixed remuneration rates specified by the Minister of Justice for the sworn translator's services provided at the request of a court, public prosecutor, the police or public administration bodies. The list of criminal infringements presented in Kubacki's book referred to above and thoroughly discussed in it (2012, 312–313) has not changed at all.

In this paper, we would like to pay attention to the factual infringements. They are of different character and have varying degrees of significance. As a result, they may lead to more or less serious consequences for the sworn translator (cf. Biel 2011, 14). The most typical factual infringements are translation errors, sometimes even critical (fatal) ones (cf. Kubacki 2014, 52–55).

The gravest translation errors involve conveying in the target text a different item of information than the one contained in the source text. This is what happened in the case of a sworn translator of German who, instead of stating that a sentenced person is **not** in prison, stated that this person **is** there. Of course, losing the adverb **not**, if it had not been discovered in time, could have had very serious consequences because the translation was addressed to a judge who on its basis was to take decisions about the sentenced person. Another sworn translator of German was asked to translate a certificate attesting that its holder was doing a part-time university course. The translator, however, instead of the term *part-time university course* used the term *full-*

time university course, which in this case was a key piece of information and exposed the person who had commissioned the translation to negative financial consequences. A sworn translator of English rendered the term *overdraft limit* as *limit overdrawn*, which could have resulted in refusal of a loan by a bank. Another sworn translator of English translated *a credit note* as *an invoice*, the word *return* as *deliver* and the sentence *please confirm receipt of the goods* as *please confirm your arrival*. A sworn translator of German rendered the phrase *disclaiming the inheritance in its entirety* as *waiving inherited compensation claims*. A sworn translator of French translated the phrase *the parties are not subject to taxation* as *the parties are not acting under duress* whereas a sworn translator of Catalan translated the verb *doblar* as *to double-charge* (a credit card) and not – as was required by the context – *to copy* (it). This last case allowed the Commission for Professional Accountability to pay attention to the fact that while translating the translator should consider the context within which a given word is used and that she or he cannot just mechanically make use of the first meaning found in a dictionary.

The omission from the target text of information in the source text falls into the second category of translation errors. This can result either from an oversight (for instance of a line of the text) or from an adopted strategy of not translating those parts of a document which are considered irrelevant by the translator (for instance not translating boxes which have not been filled in). However, under the rules for doing certified translations, such a strategy is unacceptable. The translator is obliged to translate the whole document, omitting nothing from it. She or he has to render in the target text all the data contained in the source text. She or he is even expected to inform the reader about pictorial elements in the document being translated and to describe characteristic features of its appearance (such as watermarks or any damage to it). The idea of translating the whole document is based on an assumption that the only task of the translator is to convey the content and it is the recipient of the translation who decides the significance of the content components.

Mechanical errors, usually connected with copying numbers, fall into the third and last category of translation errors. In some cases, those errors do not lead to any legal consequences (for instance a telephone number copied incorrectly); however, no matter how minor, they are errors and they may sometimes produce negative effects. Thus, the translator is not allowed to copy incorrectly any letter or figure from the vehicle identification number shown on a registration certificate because this will result in an automatic refusal of the translation by an official. She or he is either not allowed to make an error while translating the date of birth or the expiry date of a document. The incorrect copying of figures in such a situation may have very serious repercussions. Furthermore, the translator should copy certificate, file or record numbers very carefully in order to allow the recipient of the translation to identify those documents if need be. Any errors in this respect will render the task more difficult if not impossible. In this context, it is no wonder that the Commission takes a critical look at even such small – one would think – errors as changing the number 3257 to 5257. Of course, these types of errors do not lead to an automatic imposition of a penalty by the Commission because it takes into consideration other factors, such as the consequences of an error

and the number of errors. Even so, sworn translators should be aware that they are expected to have a system of work which eliminates the possibility of committing mechanical errors.

Sworn translators are also punished for infringement of the impartiality rule. A sworn translator, as a person who enjoys the confidence of the public, must follow the rules for doing certified translations and can take into account nothing else. This lies at the heart of the profession of sworn translator and is a source of trust in the translations she or he does. Their recipients must be convinced that the translation has been done impartially, which means that nothing has been added to it, nothing has been omitted from it and nothing has been twisted in it either to the advantage or to the disadvantage of the client. Failure to observe the above rule resulted in the imposition of a penalty on a sworn translator of Hebrew. He transliterated from the Hebrew alphabet into the Roman alphabet an identical form of the surname appearing twice in the same vital record in two ways – in one place in a different manner than in the other. Such a solution was advantageous to the client and the translator adopted it on the basis of the client's explanations without referring to the appropriate documentation which would justify the change in the transliteration of the same Hebrew surname. Although the rules for transliteration from the Hebrew alphabet into the Roman alphabet allow for the use of different letters from the Roman alphabet for the same signs of the Hebrew alphabet, taking the liberty of doing this in the above case was malpractice because the translator did not have enough data to make the change. The Commission for Professional Accountability arrived at just this conclusion, clearly stating the translator's guilt and administering an admonition to the translator. As Cieřlik, Laska and Rojewski (2010, 48) write, *the translator should maintain impartiality in the face of sometimes conflicting interests of the recipients of the translation*. Kaczocha and Mazuryk (LEX/el. 2011) add that *if a text is ambiguous, the translator should not at all costs force through those of its meanings which are advantageous to the person commissioning the translation*. It is necessary to strongly emphasize that the sworn translator does not represent the person who commissioned the translation – she or he is an impartial expert whose task is to render the meaning of the source text as faithfully as possible and without any omissions or additions.

Sworn translators often translate the same types of documents: for instance, birth certificates, registration certificates or diplomas. It comes as no surprise then that, when they receive a standard document, they make use of a similar translation they have made before and only substitute the new data. Obviously such practice is not reprehensible as long as the new translation is done with due diligence. This means that the translator has to remove all the old data and substitute in their place the new ones. If she or he does not do that carefully enough, he will expose herself or himself to the charge of being insufficiently diligent. This error was made by the sworn translator of Ukrainian. He made use of his previous translation of a standard document (stored on his computer database), but changed nothing in it because – as he explained – *something diverted his attention from translating*. As a result, the client was given the translation of a different document, not the one, which she had submitted to be translated. Such practices, which evidently infringe the due diligence rule, are perceived by the Commission for Professional Accountability as unjustifiable.

Finally, it is necessary to pay attention to the fact that sworn translators are obliged to take care of the linguistic correctness of their translations and to use the appropriate register. Exemplary translations do not contain any linguistic errors and are adjusted in terms of their style to the genre of the text being translated. Of course, the Commission for Professional Accountability does not punish for minor linguistic or stylistic flaws because they are practically unavoidable. Sworn translators usually work alone, very often under the pressure of time and – if translations are the only source of their income – they have to translate a lot. Market and statutory rates for translations make it impossible for them to hire a proofreader as then translating would become unprofitable. Such working conditions must result in various linguistic and/or stylistic slips in translations because there is no time to put the finishing touches on them. The Commission, aware of the realities, does not hold unreasonable expectations; however, it is of the opinion that a certain level of linguistic and stylistic correctness must be achieved. If, therefore, a translation contains a great number of linguistic and/or stylistic errors indicating that the sworn translator has a poor command of a foreign language or her or his mother tongue, then this fact alone might be and has been the reason for imposing a penalty on the translator. It is widely assumed that sworn translators must be real experts on their mother tongue and this foreign language for which they have been appointed and that they are obliged to improve – in accordance with the provisions of the APST – their professional qualifications.

Conclusion

The establishment of the Commission for Professional Accountability of Sworn Translators confirms the significance of the role they play in social life. The translations made by them influence to a lesser or greater degree the lives of the people to whom the translations relate or who have commissioned the translations. Incorrect translations may have very serious negative consequences; for instance, they may make it impossible for somebody to enter into matrimony, may cause somebody to be imprisoned or may expose somebody to huge financial losses. As certified translations play a major role, it is the task of the Commission for Professional Accountability to take utmost care in all respects relating to them. By punishing unreliable sworn translators, the Commission sets standards of professional conduct and draws the line between acceptable and unacceptable behaviour. It also fulfils a preventive function because its presence alone causes sworn translators to ensure a decent quality of their work if they do not want to be summoned before it.

How, then, can this be avoided? The translators' errors described above, which resulted in the imposition of disciplinary penalties, allow for the formulation of a set of rules sworn translators should obey. The most important of them are as follows: rendering in the target text the meaning of the source text as faithfully as possible, ensuring the accuracy of the translation, which manifests itself in not omitting from the translation any elements of the source text and in not adding to the translation any elements absent in the source text, taking care of linguistic and stylistic correctness, maintaining impartiality and exercising diligence in all matters connected with the translation process. The prescriptive and disciplinary function of the Commission for

Professional Accountability, which ultimately results in increased self-discipline of all sworn translators, is the decisive factor justifying its existence.

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